U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: MAR 18 2013 OFFICE: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a neurosurgeon. The petitioner is a neurosurgery resident at a teaching hospital of the Florida. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a statement from counsel.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dept. of Transportation (*NYSDOT*), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on February 1, 2012. The initial submission included a statement from the petitioner. The petitioner appears to have prepared the statement by following a template. Parts of the template, not completed, remain in the statement. A passage on pages 13-14 reads, in part:

> 24. Important ongoing result
>
> 25. 1-2 paragraph about research
>
> All of them sighting [*sic*] the superior ability and the morbidity and mortality of these problems – SCI and CDC citations
>
> How this work is beyond others

Lab skills in details and how rare they are and how essential they are for research

List of special lab skills

How the research is original

How it is unique

How I am the first to do it

Page 5 shows another list of topics, comparable to that shown above. Most significantly, another passage on page 14 reads:

Describe the duties and responsibilities

Do not use junior resident – present as a full time house staff

[redacted]

I work as the full time house staff in the department of Neurosurgery at [redacted] hospital. . . .

The above passage strongly suggests that the petitioner is a "junior resident" at the [redacted] Otherwise, the advice to avoid the phrase "junior resident" would be superfluous; there would be little need to advise the petitioner not to use a job title that he does not, in fact, hold.

In a statement accompanying the petition, counsel stated:

> [The petitioner's] role as a spine surgeon extends beyond merely attending to a small community of patients in research and clinical settings. The expansive scope of [the petitioner's] salient contributions encompasses not only his immediate field of nuero/ [*sic*] spine surgery, but also the medical community at large both nationally and internationally. His original research has already had a direct impact on the field and has gained him international recognition. Through his various publications and presentations, [the petitioner] is not only reaching a large and distinguished audience, but he is in fact reaching countless leading specialists in the field throughout the country and even the world. He is thus having a profound and direct impact on the medical field.

Counsel stated that the petitioner has published his research in journals and presented it at conferences. Counsel correctly asserted that this dissemination of research work provides benefits that are national in scope. This work, however, will prospectively benefit the United States only if the petitioner continues to perform research. Research conducted in the context of graduate study or training is, by nature, time-limited and not necessarily indicative of the student's or trainee's future career trajectory. The burden is on the petitioner to establish that he will continue to perform

research after he has completed inherently temporary training assignments such as his house staff posting at [redacted]

The petitioner submitted copies of his published articles. Researchers are expected to make their results available, via either publication or presentation. Participation in this dissemination is not, itself, evidence of eligibility for the waiver. Therefore, it is necessary to examine documentary evidence to establish the extent to which the petitioner's work has attracted attention and influenced others in the field.

The petitioner submitted partial or complete copies of several articles by other researchers. Seven of the articles show citations to one of the petitioner's articles, [redacted]" published in [redacted] in 2008. Three of the citing articles are either in a foreign language with no translation, or are incomplete and do not show the context of the citation. Other fragmentary articles do not show citations of the petitioner's work at all. It is significant that the article does not report original medical research by the petitioner. Rather, the article is an overview of previously published work by others. The "Methods" section of the article (on page A223), in which the researchers described how they gathered the information for the article, did not describe any clinical or laboratory work. Instead, that section reads, in full:

> We performed a detailed search in PubMed and MEDLINE for the genetic markers of scoliosis using the key words scoliosis, genetic markers, genes, and spinal deformity. A broad range of articles were reviewed and the relevant publications that contributed information regarding the genetics of scoliosis were selected for inclusion in this report.

All of the petitioner's documented citations stem from this one article, which is about genetics rather than neurosurgery, and which amounts to a discussion of existing literature. The petitioner has not shown that his compilation of past articles has affected the practice of neurosurgery in a manner that is independent of the collected articles themselves.

In terms of the petitioner's clinical practice of medicine, counsel stated:

> [The petitioner] frequently diagnoses and performs surgeries on patients from different parts of the country on referral. He has worked at tertiary facilities that are constantly referred patients from various regions throughout the country. Because he is able to perform such advanced procedures that only a very small percentage of his peers are able to perform, he is called on to treat patients from around the country. In addition, he is constantly teaching the use of the surgical techniques he has mastered to both junior and even senior peers, as such creating a ripple effect that is making the performance of these procedures more widespread nationally.

The above claims lack evidentiary support, as well as details that would permit verification. As for the claimed "ripple effect" of teaching "advanced procedures," the petitioner does not claim to have invented or significantly improved these procedures. An alien's job-related training in a given procedure, whatever its importance, is not an achievement or contribution comparable to the innovation of that new method. *See Matter of New York State Dept. of Transportation*, 22 I&N

Dec. 221 n.7. The basic claim appears to be that, having learned advanced procedures himself, the petitioner can now teach them to others. Counsel did not explain how this distinguishes the petitioner from other medical students who, like the petitioner, take on some teaching duties even while completing their own professional training. Also, counsel did not explain why credit for the "ripple effect" should go to the petitioner rather than to his teachers, or their teachers before them.

Counsel stated:

> In the labor certification process, the Department of Labor stipulates that the employer describe its job opportunity without "unduly restrictive" requirements [22 C.F.R. sec. 656.21(b)(2)]. The employer's requirements must conform to the standard job classifications set forth in the Dictionary of Occupational Titles and the requirements must be those normally required for the job in the United States. These conditions fall short in consideration of the nature of [the petitioner's] work in the operating room, because the factors relating to this scientific technique transcend the "context" of any specific employer's "business" operation. . . . establishing "business necessity" for "unduly restrictive" requirements is outside the scope of the instant petition. As a highly skilled surgeon, [the petitioner] is directly responsible for saving lives. Such skills cannot be measured in the context of business necessity.

Chapter 22 of the Code of Federal Regulations deals with "Foreign Relations"; there is no 22 C.F.R. § 656. Counsel apparently meant to cite the regulation at 20 C.F.R. § 656.21(b)(2), which deals with labor certification. Though subsequently revised, that regulation used to read: "The employer shall document that the job opportunity has been and is being described without unduly restrictive job requirements." The reference to "business necessity" appears to relate to the former regulation at 20 C.F.R. § 656.21(b)(2)(ii), which read:

> If the job opportunity involves a combination of duties, for example engineer-pilot, the employer must document that it has normally employed persons for that combination of duties and/or workers customarily perform the combination of duties in the area of intended employment, and or the combination job opportunity is based on a business necessity.

The regulation mentioned "business necessity" specifically in relation to a combination of duties, which the petitioner has not claimed in this proceeding. Counsel did not explain how surgical skills "cannot be measured in terms of business necessity," when an employer that provides or teaches neurosurgery can presumably require its job applicants to have certain necessary skills in that area.

Counsel cited a decision by the Board of Alien Labor Certification Appeals (BALCA) to support the claim that a labor certification application for the petitioner would likely be denied as "unduly restrictive." The inability to obtain a labor certification would not, by itself, be a deciding factor in the petitioner's favor. The wording of the statute makes it clear that exemption from the job offer requirement rests on the national interest, not on an alien's inability to obtain a labor certification. Even so, the cited materials do not strongly support counsel's assertions. In the cited administrative decision, BALCA ruled:

> This Panel finds the unqualified term "artistic ability" to be vague and subjective without any guidelines or criteria available to determine whether an applicant is qualified for the position. Accordingly, the special requirement of artistic ability is unduly restrictive under §656.21(b)(2), because the Employer has rejected otherwise qualified U.S. workers based on this vague, subjective requirement.

Michael Graves Architect, 89-INA-131, 1990 WL 300112 (Bd. Alien Lab. Cert. App. Feb. 21, 1990). BALCA found that "artistic ability" is subjective and difficult to "quantify . . . in terms of length of training or experience." *Id.* Counsel sought to compare the vaguely-defined "artistic ability" in *Michael Graves* to the present petitioner's "ability to master state-of-the-art technologies and complex research techniques," and contended that the petitioner's "scientific ingenuity cannot be quantified because his extraordinary skills are contingent upon his specialized knowledge in neurology, and his skills in the operating room." Counsel did not explain how "specialized knowledge" correlates to "scientific ingenuity." If the petitioner did not, himself, innovate the techniques he uses, but instead learned them in the course of his own education, then his knowledge of those methods is not a matter of "ingenuity" (defined as "inventive imagination or skill"). *Webster's II New College Dictionary* 569 (2001). Special or unusual knowledge or training, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. *NYSDOT*, 22 I&N Dec. 221.

Counsel claimed: "*Only the very best physicians become surgeons and only the very best surgeons have the requisite skill and innate ability to operate on something as complex and delicate as the brain and spine*" (counsel's emphasis). Counsel's claim relies on a number of unproven assumptions, such as the contention that there is a skill-based hierarchy of medical professions. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel stated:

> [The petitioner's] contribution to a chapter in the book '[redacted]' – which is a widely used reference tool, should be considered a significant contributions [*sic*] as hundreds of spine surgeons throughout the country refer to it before approaching a specific case, and it is also used in training programs throughout the country. . . .
>
> ***[The petitioner's] research has already changed the way many surgeons practice medicine and approach certain clinical issues.*** Please see testimonials.

(Counsel's emphasis.) The petitioner submitted six witness letters. Counsel claimed that "the support letters . . . show that [the petitioner] is one of the most talented neurosurgeons in the world." Three of the six letters are from individuals on the faculties of universities that have trained the petitioner. [redacted] chairman of the Department of Neurological Surgery at the [redacted] stated:

> [The petitioner] has distinguished himself . . . through his outstanding clinical work and cutting-edge research studies. He is an important asset to our institution and to the American medical community because of his outstanding clinical abilities, and superior ability to educate others.
>
> [The petitioner] has developed a stellar reputation in our institution for his quick thinking in clinical emergencies. . . .
>
> [The petitioner] is not only instrumental in providing all aspects of medical care, but also teaches complex medical procedures to interns, physicians, medical students, and other allied professionals. . . .
>
> Currently, [the petitioner] is involved in a study on heat shock proteins, clinical trials for the brain and spinal cord tumor, Glioblastoma Multiformae. . . . The patient's tumor is transformed into antibodies and injected back into the dermis of the skin to stimulate antibodies against the tumor cells. This is the phase III clinical trial and [the petitioner] is one of the key role players in this study. This study promises to revolutionize the treatment of this devastating tumor and increase the life expectancy dramatically. In addition, [the petitioner] was also involved in providing hypothermia to post operative patients who have untoward and devastating spinal cord injury. . . . According to this study, the patients who have received this treatment have recovered well and improved significantly based on the American spinal cord injury assessment (ASIA) scale.

The assertion that the petitioner "is involved" in the above projects does not explain the nature of that involvement, or to what extent the petitioner is responsible for the inception of the studies. Furthermore, the preliminary results that [redacted] described do not show wider impact or implementation. It is too early to tell whether [redacted] is correct in claiming that a still-ongoing study will "revolutionize" cancer treatment.

[redacted] also of the [redacted] praised the petitioner's "superior skills in . . . his treatment of a patients [*sic*] suffering from chronic intractable pain. . . . [The petitioner] has been performing spinal cord stimulator on these patients. . . . Very few neurosurgeons in the entire country have proficiency in this technique." [redacted] added that the petitioner "has often correctly diagnosed rare and serious conditions that other even more experienced physicians miss," but did not elaborate.

[redacted] of the [redacted] (where the petitioner was a resident in 2009-2010) stated that he has "personally been influenced" by the petitioner's published work. [redacted] also stated:

> Because of [the petitioner's] unique abilities as a physician scientist and his superior abilities to perform minimally invasive neurosurgery, he is combining his skills to develop new clinical techniques for treating . . . complications that result from traditional aneurysm treatments. . . . The most common complication of this procedure is coil herniation, where the coil [inserted into the aneurysm to trigger

clotting] slips out of the aneurysm and blocks the main vessel leading to lack of blood supply to the area of brain supplied by that artery. This leads to serious complications such as stroke. [The petitioner's] study proposed the novel use of is a minimally invasive catheter-based system designed to retrieve and remove clots in patients experiencing acute ischemic stroke. [The petitioner] and his team further extended this system to retrieve herniated coils instead of what is currently being used. His proposed method has the following advantages: Endovascular science is an ever growing field where the treatment has been constantly evolving. device is an effective tool to the coil herniation retrieval systems. It is more useful as the endovascular surgeons are familiar with its use in the clot retrieval. The preliminary results of this study are already intriguing and I am excited to see the final results of [the petitioner's] study.

of is the only other witness to discuss the project:

As a neurosurgeon with over twenty-one years of experience, I find myself constantly adapting my clinical work to reflect results produced by breakthrough studies. [The petitioner's] 2010 study ' is one such study that has influenced my clinical practice. . . . In [a 2010] paper [the petitioner] has extended [the device's] application to retrieve the As the endovascular workers are familiar with this as a clot retrieval device, it's [*sic*] application in herniated coil retrieval will be applied more often and it is a very good addition to the ever growing endovascular science. Since I observed the results of this study at the I have begun using the device with greater frequency and have seen a greater rate of successful clinical outcomes.

chairman of neurosurgery at the in Ohio, stated:

[The petitioner] is an accomplished minimally invasive spine surgeon. . . . He has contributed to one of the most widely used reference books in the field of spinal surgery – ' . .

He is certainly in the top echelon of spine specialists in India. [The petitioner's] publications have helped advance the spinal surgery field.

provided few details to support the fairly general claims in his letter, and he cited no evidence that is "one of the most widely used reference books in the field."

associate professor at stated that the petitioner "has truly distinguished himself from other neurosurgeons because of his rare expertise in research of spinal cord injury and spine surgery. . . . His surgical abilities in creating a reproducible spinal cord injury mode in rodents is extremely important to the science community as it allows for studies on various therapies to be conducted with objective comparison." whose own specialty involves "Biomechanical mechanisms of anticancer drug resistance," claimed no particular expertise in spinal cord injury or spinal surgery.

The director issued a request for evidence on June 2, 2012. The director quoted from some of the witness letters, but found that "[t]he statements are vague and give every little detail about how the petitioner's work and expertise has made an impact [on] the field."

In response, counsel stated that the petitioner's "research has been presented across multiple esteemed forums, and has been recognized for its influence, as evidenced by the two-dozen peer-reviewed publications and national conference presentations his work has been rewarded with." This is a circular claim; journals and conferences are, themselves, the "multiple forums" through which the petitioner has presented his work. Counsel, therefore, contends that the articles and presentations are evidence of their own influence. Such presentations and articles present an opportunity to influence the field, but they do not, themselves, show that the petitioner's research "has been recognized for its influence."

The petitioner submitted another citing article, published in in 2012. This article, unlike the other citing articles, did not cite the petitioner's 2008 article. Instead, it cited a 2011 article from The citing passage, however, stated that the petitioner and his coauthors "conducted a retrospective review of the available literature, finding no clear evidence for improved outcome with surgical treatment versus serial observation." The "Methods" section of the petitioner's article reads:

> A PubMed search was performed to include all relevant MR imaging studies in which management of suspected incidental LGG was reported. Comparisons were made between the surgical treatment arm and the active surveillance arm in terms of outcome, mode of discovery, reasons for treatment, and histology.

Therefore, the newly submitted citation, like the others, relates to the petitioner's "review of the available literature" rather than any novel finding.

The petitioner submitted a printout from the web site of Quality Medical Publishing, Inc., describing the textbook (mentioned previously) to which the petitioner had contributed. Counsel stated: "The fact that he was asked to and authored a chapter in this book is a testament to his recognized expertise in the field, clear evidence of his ability to influence the field more than his colleagues. Please take into consideration the 'key features' description of the book on the publisher's website, referring to the authors as 'leading experts.'"

The printout from the publisher's web page amounts to promotional advertising for the book, rather than a disinterested assessment of its merits. Therefore, the page's references to the authors (always collectively, never specifically naming the petitioner) as "leading experts," "A Who's Who of Spine Surgery" and "world-renowned experts," and the book as "A Virtual Gold Mine" and "a landmark publication," have little weight as objective evidence. A scholarly publication can have tremendous influence, but the publication's very existence is not, itself, evidence of impact on the field.

The petitioner submitted two further witness letters. is an assistant professor at the , where the petitioner trained from 2007 to 2009. asserted:

(b)(6)

> I can state with confidence that [the petitioner] is one of the nation's top neurosurgery specialists with additional super-specialization in the field of complex spine surgery.
>
> I would like to bring to attention two of the major ground breaking publications which is [*sic*] very relevant to my practice. "The elevated BMI and risks of CSF Rhinorrhea after transsphenoidal surgery" is a very novel study which explains the effect of obesity on outcome of neurosurgical patients. . . . This study has certainly influenced my practice, as I now approach wound closure very aggressively when I encounter CSF leaks during surgery in obese patients. This preventive measure has significantly reduced the hospital stay and saved several hours of labor and dollars for the country.

The second article discussed concerns the previously discussed use of the Merci device to retrieve herniated coils. stated: "I have used this modality several times in my own practice to retrieve herniated coils." The petitioner's response to the request for evidence included his article. '
ublished in The article stated: "The Merci Retriever device can be utilized successfully for removal of migrated coils and stents in endovascular surgery," and described three successful instances of such removal. The article did not, however, indicate that the petitioner or his research team was the first to devise this usage of the Merci device. Rather, the article stated:

> A review of the literature reveals several reports of the Merci Retriever device utilized for the management of coil migration. . . .
>
> Vora et al. reported the case of a 37-year-old man who suffered a subarachnoid hemorrhage from vertebral confluence aneurysm. During treatment of the aneurysm by stent-assisted coil embolization, a misplaced coil became entangled with the stent during attempted repositioning. The Merci device was utilized successfully for removal of the stent-coil complex, and the aneurysm was subsequently embolized. O'Hare and colleagues reported migration of the coil from a PCOM aneurysm to the MCA, which once free in the MCA was successfully retrieved using an old-generation X6 Merci Retriever.

(Citations omitted.) The petitioner's own article, quoted above, proves that the petitioner's research group was not the first to use the Merci device to extract migrated coils, and was not the first group to publish such results. The bibliography of the petitioner's 2012 article identifies two articles that, by their titles alone, report earlier successes: a 2008 article in the *Journal of Neuroimaging* by N. Vora *et al.*, "Retrieval of a displaced detachable coil and intracranial stent with an L5 Merci Retriever during endovascular embolization of an intracranial aneurysm," and "Retrieval of a migrated coil using an X6 MERCI device" by A. O'Hare *et al.*, published in *Interventional Neuroradiology* in 2009. Both of these articles predate the 2010 conference where the petitioner first presented his own results.

associate professor of neurological surgery at Nashville, Tennessee, stated:

> After independently reviewing his resume, I can unequivocally state that [the petitioner] has accomplished a tremendous amount in the span of very few years. . . . I have rarely seen this amount of scholarly activity. [The petitioner's] achievements span the entire breadth of neurosurgery and are of impressive quality.

praised two of the petitioner's papers, referring to each of them as a "manuscript." The petitioner did not submit the papers with the initial submission at all, and the versions submitted in response to the request for evidence were not finalized. The papers exist in the record only as unpaginated, pre-publication proofs. There is no evidence, therefore, that the articles existed when the petitioner filed the petition on February 1, 2012. An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request. 8 C.F.R. § 103.2(b)(1). USCIS cannot properly approve the petition at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

Regarding one of those articles, stated:

> Another example is [the petitioner's] examination of the practice of many spine surgeons to position their patients with an extra high padding at the level of the thighs to obtain better lordosis. [The petitioner's] manuscript explains the major adverse events that can take place in such patients in the manuscript 'Anterior thigh compartment syndrome and local myonecrosis after posterior spine surgery on a Jackson table: report of two cases.' Candidness in reporting this complication is very essential in the field of neurosurgery and it is a very rare quality. This paper has improved patient care at many centers.

did not identify any of the "many centers" or provide any evidence to support the claim. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). The article itself was not merely an "examination of the practice" of padding placement. Rather, it described complications in two surgeries in which the petitioner participated; in one of those complications, the patient died of a pulmonary embolism two weeks after surgery. The article indicated that the surgical team had intentionally changed the positions of support pads on the operating table, and that "the pressure of the higher IC pads on the thigh was obviously not well tolerated by these patients undergoing long surgeries." The authors concluded: "IC and thigh pads should not be reversed during positioning on a Jackson table." The petitioner submitted no evidence that reversal of the pads was common practice at "many centers" or that the publication of the article ended the practice.

It is certainly true that candor is an important quality, so that others can learn from errors like those reported in the article. Nevertheless, given its contents, this article is not persuasive evidence that the petitioner "is one of the nation's top spinal surgery specialists" as previously

claimed, or "one of the nation's top neurosurgery specialists" as more recently asserted. previously pointed to individual patient outcomes as evidence that the petitioner should receive the waiver. That logic, applied here, would surely be a negative factor.

The director denied the petition on September 19, 2012. The director acknowledged the petitioner's published work, but found that the petitioner had not established its importance or influence. The director also acknowledged the witness letters, but found that they did not establish that the petitioner's accomplishments "were significantly greater than his peers" or that "the petitioner's work has been widely used in the field as a whole."

On appeal, counsel repeats the assertion that the publication of the petitioner's work shows that it "has been recognized for its influence." The petitioner submits nothing from the publishers of any journal to show that publication is a form of recognition for influence, and counsel fails to explain how a work can be influential even before it becomes widely available through publication.

Counsel also repeats the observation that the publisher of the textbook referred to the book's contributors as "leading experts." Self-serving promotional materials carry negligible weight as objective evidence of the petitioner's influence or stature in his field.

Counsel asks that the AAO "take into consideration the testimonials from experts in the field attesting to the significance of [the petitioner's] work." The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have received consideration above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as above, evaluate the content of those letters as to whether they support the alien's eligibility. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). *See also Matter of Soffici*, 22 I&N Dec. 165. The letters considered above contain assertions of acclaim and recognition, with no corroborating evidence to show that those assertions are credible. The witnesses made specific claims of fact which ought to be amenable to verification and evidentiary support, but the petitioner has not provided that support.

Some witness letters contain similar language when describing the beneficiary's achievements and abilities, suggesting the language in the letters is not the authors' own. *Cf. Surinder Singh v. Board of Immigration Appeals*, 438 F.3d 145, 148 (2d Cir. 2006) (upholding an immigration judge's

adverse credibility determination in asylum proceedings based in part on the similarity of some of the affidavits); *Mei Chai Ye v. U.S. Dept. of Justice*, 489 F.3d 517, 519 (2d Cir. 2007) (concluding that an immigration judge may reasonably infer that when an asylum applicant submits strikingly similar affidavits, the applicant is the common source). The similarly worded letters regarding the petitioner's use of the Merci retrieval device implied that the petitioner had devised a new use for a device previously used only for "clot retrieval," but the record shows that the petitioner was not the first to publish about the use of the device for retrieval of migrated coils in aneurysm patients. At best, the petitioner was among the early adopters of the method. Thus, the letters are not only of questionable origin, but also factually suspect. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Counsel states: "Because of [the petitioner's] desire to combine clinical care with research, immigration based on self petition is the best possibility to ensure that he continues his research, as the permanent immigration through labor certification would be swifter if he ceased research activity." This hypothetical alternative scenario lacks corroboration and explanatory detail. Furthermore, apart from articles that largely summarize prior publications, much of the petitioner's recent published work has involved reporting the results of surgical procedures that he has performed. Counsel does not explain why the labor certification process would prevent the petitioner from continuing to publish case studies in this way. Furthermore, a petition filed with a labor certification would not permanently prevent the petitioner from continuing in research, even if the labor certification were for a strictly clinical position. Counsel has not shown that, as a lawful permanent resident, the petitioner would face restrictions on his ability to accept positions that would combine research with clinical practice. The record does not show that the petitioner's past research contributions have been of such consequence that it would be against the national interest to curtail those activities even temporarily. Rather, the record indicates that the petitioner is, or very recently was, a "junior resident" whose chief obstacle to a permanent job offer is that he has not yet completed the professional training that would qualify him for a research/clinical position, for instance on the faculty of an accredited medical school. To obtain permanent immigration benefits at this early stage would certainly be in the petitioner's interest, but the petitioner has not shown that it would be in the national interest.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.